

### **REMARKS**

Claims 1 to 42 are the pending claims being examined in the application, of which Claims 1, 6, 7, 14, 15, 22, 23, 28, 29, 34, 35 and 41, the independent claims, are being amended herein. Reconsideration and further examination are respectfully requested.

Turning to the rejection of the claims based on art, Claims 1 to 42 are rejected under 35 U.S.C. § 103(a) over “TuneTo.com’s Community-Based Internet Music Data Streaming System”, as explained in: 1) Shands, Mark, “An Exclusive Interview With Michael Weiss, TuneTo.com” (April 14, 2000), 2) Konig, Bill, “The College Music Journal Names TuneTo.com, CMJ Website of the Week (April 12, 2000), 3) Alvear, Jose, “Q&A With Tim Bratton, President of TuneTo.com” (November 23, 1999), and 4) Smotroff, Mark, “TuneTo.com Seals \$2.6 Million Series A Funding”, (January 18, 2000). (The previous Office Action mentioned 35 U.S.C. § 102(e). However and without providing a specific explanation, the current Office Action makes no mention of § 102(e). It is assumed that the reference to § 102(e) in the previous Office Action was in error, and/or that any grounds for rejection brought under § 102(e) in the previous Office Action are now withdrawn. If the Applicant’s assumptions are incorrect, the Examiner is respectfully requested to provide further clarification). Reconsideration and withdrawal of the rejections are respectfully requested.

It is respectfully submitted that the references when taken alone, or in combination (if such combination is even permissible, a fact that is in no way conceded), fail to render obvious the invention of the present claims. Accordingly, the 35 U.S.C. § 103(a) rejection should be withdrawn.

Independent Claims 1, 6, 7, 14, 15, 22, 23, 28, 29, 34, 35 and 41 are being amended to even more clearly recite that an individual data stream is defined, and that in defining the

individual data stream, content is selected for the individual data according to determined characteristics of a member community's preferences. Support for the amendments can be found in the specification, *inter alia*, in the steps shown in Figure 9, and the description commencing at paragraph 41 of the publication (i.e., U.S. Publ. No. 2003/0046399) of the as-filed application.

With specific reference to claim language, Claim 1 recites a method for providing a data stream according to preferences of a community. Each member of the community has associated preferences regarding data stream content, and each member of the community has been determined to have at least one data stream content preference in common. Characteristics of the community members' preferences are determined to provide determined characteristics. An individual data stream is defined by selecting content for inclusion in the individual data stream according to the determined characteristics of the member community's preferences regarding data stream content.

The Shands, Konig, Alvear and Smotroff articles are press releases which provide very cursory remarks, and fail to provide an enabling disclosure of the TuneTo.com system and/or any of the topics mentioned, and thus it is respectfully submitted that the rejections based on these references be withdrawn as failing to contain sufficient disclosure to qualify as prior art. However, in an effort to respond to the Office Action, the grounds for rejection are discussed with reference to the articles, as best they can be understood given the information provided.

It is respectfully submitted that none of the references teach, suggest or disclose defining and individual data stream for a community by selecting content for inclusion in the individual data stream according to determined characteristics of a member community's preferences regarding data stream content, and/or selecting the content in accordance with characteristics of preferences of a community whose members are determined to have at least one preference in

common. In contrast to the claimed content selection, the TuneTo.com system, as can best be understood from the description provided in the references, focuses on selecting from a number of pre-existing channels those channels that are to be presented to a user for the user's channel selection.

Reference is made to page 4 of the Shands article, wherein the interviewee states that:

“[a]t TuneTo.com, we help listeners actually find their perfect channel by matching them up with one of the thousands of different channels that are being broadcast.”

The single-page Konig article states:

[a] nice TuneTo broadcast feature is the Preset Manager, which allows listeners to actually educate their Receivers as to which type of music and which artists they like or dislike. Registered visitors are asked to rank up to five favorite music genres including urban/rap, indie rock, metal, electronic and many others. Then visitors rate their feelings toward certain artists within a music style on a five-point scale from 'dislike' to 'one of my favorites.' Next listeners type in three favorite artists, click on a find button, and land on a page listing channels that most closely match their music preferences. To become a site member, simply fill out a user registration page requesting standard demographic information.”

Thus, the TuneTo.com system focuses on matching a user to a set of pre-existing channels, without reference to how content for a channel is defined. The TuneTo.com system therefore is therefore clearly useful only after the content for a channel has already been defined - in short user preferences are used to determine which channel a user will be directed to, not what specific content will be presented by that channel. The present claim are directed to, among other features, define the content that is to be presented to an individual user, a feature not addressed by the TuneTo.com system or any of the references discussing it. Nothing in the TuneTo.com system, as discussed in the Shands, Konig and/or Alvear articles refers, teaches, suggests or discloses defining an individual data stream by selecting content for inclusion in a

the individual data stream in accordance with characteristics of preferences of a community whose members have been determined to have at least one preference in common.

The Smotroff article has been reviewed and is not seen to remedy the above-noted deficiencies.

None of the cited articles, either alone or in any hypothetical combination (if such combination is even permissible, which is in no way conceded), teach, suggest or disclose, defining an individual data stream by selecting content for inclusion in the individual data stream in accordance with characteristics of preferences of a community whose members have been determined to have at least one preference in common.

For at least the reasons discussed above, the applied art, when taken individually or in any permissible combination (if one even exists, a fact that is in no way conceded by Applicants), fails to disclose or suggest the claimed invention. It is therefore respectfully submitted that the § 103(a) rejection should be withdrawn

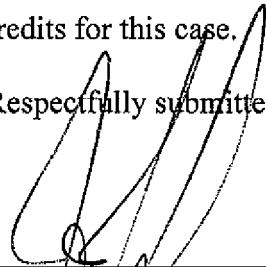
Independent Claim 1, as well as each of the claims that depend therefrom, is therefore believed to be in condition for allowance. For at least the same reasons stated in connection with Claim 1, independent Claims 6, 7, 14, 15, 22, 23, 28, 29, 34, 35 and 41, as well as the claims that depend from these claims, are believed to be in condition for allowance. Additional elements recited in these claims are also not believed to be taught, suggested or disclosed by the applied art, either alone or in any hypothetical combination (if such combination is even permissible, a point that is in no way conceded).

In view of the foregoing, the entire application is believed to be in condition for allowance. Should matters remain which the Examiner believes could be resolved in a telephone interview, the Examiner is requested to telephone the Applicant's undersigned attorney.

In this regard, Applicant's undersigned attorney may be reached by phone at (212) 801-6729. All correspondence should continue to be directed to the below-listed address.

The Commissioner is hereby authorized to charge any required fee in connection with the submission of this paper, any additional fees which may be required, now or in the future, or credit any overpayment to Account No. 50-2638. Please ensure that the Attorney Docket Number is referred when charging any payments or credits for this case.

Respectfully submitted,



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